

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

CRL.R.C.NO.1749 OF 2003

G.Jayakrishnan

.. Petitioner

-vs-

1. Jothi Ramalingam

2. State rep. by the Inspector of Police,  
Bhavani Police Station, Bhavani  
Erode District.  
(C rime No.20 of 2002)

.. Respondents

This Revision is filed under Section 397 of CrI.PC as against the Judgment of the learned Special Judicial Magistrate, Bhavani in C.C.No.1 of 2003 dated 03.07.2003.

For petitioner : Mr.T.P.Manoharan  
For respondents : Mr.N.Manoharan-R1

Mr.V.R.Balasubramaniam  
Addl. Public Prosecutor-R2

O R D E R

This revision has been preferred against the Judgment in C.C.No.1 of 2003 on the file of the Court of Special Judicial Magistrate, Bhavani dated 3.7.2003.

2. The criminal case had arisen out of an accident which took place on 18.1.2002 at 11.30 a.m., on the Anthiyur-Appakudal Road, Santhipalayam Village, Bhavani Taluk.

3. The case of the prosecution is that the accused who is a driver of Tamil Nadu State Transport Corporation bus bearing Registration No.TN33-N-0775, while proceeding from north to south on the Anthiyur-Appakudal road, had driven the vehicle in a rash and negligent manner dashed against the TVS-50, TN-36-A-8173 on which the complainant was riding at the time of the accident. Due to the accident, the complainant had sustained grievous injuries on his

right hand, right thigh, right toe, right shoulder and right flank. The accused has been charged under Sections 279 and 338 of IPC.

4. After taking cognizance of the case, the learned trial Judge had summoned the same to the accused for his appearance and on his appearance copies under Section 207 of Cr.P.C. were furnished to the accused and when the offence was explained to the accused and questioned the accused pleaded not guilty.

5. On the side of the prosecution P.Ws 1 to 11 were examined. Exs P1 to P9 were exhibited.

6. P.W.1 is the complainant. According to P.W.1, on 18.1.2002 at about 11.15a.m. to 11.30 a.m, while he was proceeding from Bhramadesam to Anthiyur in his TVS 50 bearing registration No.TN-36A-8173 in a moderate speed following the traffic rules and while he was nearing the house of one Mathaiyan at Vellaiyanpalayam village, he saw the bus driven by the accused bearing Registration No.K3-TN33-0775 in a rash and negligent manner from about a distance of 300 feet and the said bus was proceeding from north to south in the same Anthiyur road and at the place of occurrence, the driver had driven the bus in a rash and negligent manner and dashed against him near the bund. He would depose that since there is no space on his left side and there was thorny fence along the side of the road to his left at the place of occurrence, he cannot go beyond the said thorny fence and the accident had occurred only due to rash and negligent driving of the driver of the bus which resulted in simple and grievous injuries all over his body and that he was admitted in a private Hospital at Anthiyur by the passersby and that he had preferred a complaint with the police under Ex P1. The doctor at Anthiyur Amman Hospital referred him to another hospital at Coimbatore where he took treatment as an in patient. He would deny that he has dashed on the side of the bus at the time of accident.

6a. P.W.2, P.W.3, P.W.4 are the ocular witnesses for the accident. P.W.2 would depose that at the time of accident, he was talking with his friend Arumugam in front of his house and that the place of accident was not a straight road but the road bends in that place. He would say that the accident has occurred only due to two reasons, the first reason is, curve of the road and second reason is that the driver of the bus had driven on the extreme west of the road. He would identify the accused as the driver who had driven the bus which involved in the accident.

6b. P.W.3 would corroborate the evidence of P.W.2 by saying that after the accident, P.W.1 was lying on a thorny fence situate on the west of the road.

6c. P.W.4 would state that since the accused had driven the bus on the extreme west of the road, the accident had occurred and P.W.1 had sustained injuries .

6d. On the basis of Ex P1 complaint, P.W.10, after hearing the accident had went to Amman Hospital ,Anthiyur where P.w.1 was initially treated on 18.1.2002 at 1.00p.m., and obtained a statement from P.W.1 and registered the case in Anthiyur Police Station under crime No.20/2002 under Sections 279 and 338 of IPC and had proceeded to the place of occurrence and prepared observation mahazar Ex P2 in the presence of P.W.5 and another witness. P.W.10 had also drawn Ex P9 rough sketch in the presence of the same witnesses. He has examined the witnesses and recorded their statements. He had arrested the accused on the same day at 16.45 hours and released him on bail.

6e. P.W.6 is the doctor, who had treated and given first aid to P.W.1 at Amman Hospital, Anthiyur. Ex P3 is the intimation given by P.W.6 to the police.

6f. P.W.7 is the senior Assistant Engineer in Tamil Nadu State Transport Corporation, Gobichettipalayam branch. According to him, the accused was a driver in the Government bus bearing registration No.TN-33-N-0775 on 18.1.2002 and the conductor of the bus was one Kaligounder and the said bus was plying from Silamber Amman Koil to Gowthampadi route on 18.1.2002. Ex P4 is the letter written by him in which he would state that he has wrongly noted the date as 18.1.2001 instead of 18.1.2002.

6g. P.W.8 is the Motor Vehicle Inspector who had inspected the bus bearing Registration No.TN-33-N-0775 on 18.1.2002 at 4.30pm., Ex P5 is the inspection report. According to him, the accident had not occurred due to any mechanical defects of the bus. He has noticed some scratches on the right side body of the bus. He has also examined TVS 50 bearing Registration No.TN-36-A-8173 and issued Ex P6 certificate. He has opined that the accident had not occurred due to mechanical defects in the TVS 50.

6h. P.W.9 is the doctor, who had examined P.W.1 at Ganga Hospital, Coimbatore. Ex P7 is the wound certificate relating to the injuries sustained by P.W.1 in the accident issued by P.W.9. After completing the investigation, P.W.11 has filed the charge sheet.

7. When incriminating circumstances were put to the accused, the accused would totally deny his complicity with the crime.

8.After going through the evidence before him, both the oral and documentary, the learned trial Judge has held that the charge against the accused has not been proved beyond any reasonable doubt

and accordingly acquitted the accused under Section 235(1) of Cr.P.C. Aggrieved by the findings of the learned trial Judge, P.W.1 has preferred this revision.

9. Now the point for determination in this revision is whether the findings of the learned trial Judge is perverse in nature and the learned trial Judge has not considered the material evidence and has given any faulty reasoning with a lack of judicial approach to warrant any interference from this Court?

10. Heard Mr. T.P.Manoharan, learned Counsel for the revision petitioner, Mr. N.Manoharan, learned counsel appearing for R1, and Mr.V.R.Balsubramanian, learned Additional Public Prosecutor appearing for the State-R2 and considered their rival submissions.

11.The Point:

To attract an offence under Sections 279 and 338 of IPC, the prosecution must prove that at the time of accident, the accused had driven the vehicle in a rash and negligent manner. Except P.W.1 no other eye witnesses viz., P.Ws 2 to 4 has deposed that at the time of accident, the accused had driven the bus which involved in the accident in a rash and negligent manner and that the accused alone is responsible for the accident. P.W.2 would state that the reasoning for the accident is the curve of the road at the place of accident and the accused/driver had driven the bus on the extreme western side of the road at the time of the accident. It is to be noted in this case that it is not a case of head on collision. According to the evidence of Motor Vehicle Inspector P.W.8, he could see only scratches on the right side body of the bus near the driver seat.

12. The explanation given by P.W.1 for the accident is that he could not go beyond the place where the accident had occurred towards west because there was a fence on the western side of the road near the place of accident. P.W.11 the Investigating Officer who had prepared Ex P2 observation mahazar, in crystal clear term, has admitted that there was no fence found at the place of accident on the western side. In this regard, the discrepancies found in the evidence of P.W.2 and P.W.3 is also worth mentioning.

13. According to P.W.2, after the accident, P.W.1 was found lying on the bund and not on any thorny fence. But P.W.3 would say that after the accident, P.W.1 was lying on a thorny fence. But neither in Ex P2 observation mahazar nor in Ex P9 rough sketch, there is any mention about the presence of thorny fence or thorny bush at the place of occurrence on the western side of the road.

14. The learned counsel appearing for the revision petitioner relying on a decision reported in Ayodhya Dube and others-Ram Sumer

Singh(1981(Supp)Supreme Court Cases 83 would contend that even in the revision, if it is brought to the notice of the Court of revision that the trial Court had not applied its mind or has failed to consider or improperly considered the material evidence placed before it or faulty reasoning are stated in the judgment or it was found that the judicial approach of the trial Court was lacking, the revisional Court can interfere even with the order of acquittal and to order retrial to avoid the grave miscarriage of justice. There cannot be two opinions regarding the observation of the Apex Court in the above said dictum. But the only thing in the case on hand is whether the trial Court has not applied its mind in the proper direction nor failed to consider the material evidence placed before it, or improperly considered the same or any faulty reasoning has been given in the findings or is there any lack of judicial approach of the trial Court to warrant any interference by this Court. But on a perusal of the Judgment of the trial Court will go to show that the learned trial Judge has appreciated the evidence in proper perspective and has analysed each and every evidence both oral and documentary before it, has come to a correct conclusion that the ingredient requires under Sections 279 and 338 of IPC has not been made out by the prosecution to warrant conviction and accordingly acquitted the accused, in my view , which does not require any interference from this Court.

15. The learned counsel appearing for the first respondent relying on T.R.Manivel-vs- Ramasamy(1998(2) MNW(cri) 332 and contended that while exercising revisional power in a case of acquittal, the Court, sitting in revision, cannot appreciate or re-appreciate the evidence on record and cannot go into the merits of the evidence on record while exercising the revisional jurisdiction, in case, it interferes with the findings of the learned trial Court. The exact observation in the above said dictum runs as follows:

"It is now well settled that though the appellate Court has the same powers as the trial Court of appreciating evidence and coming to its own conclusion on questions of fact, it should not interfere with an acquittal, unless it finds that the view taken by the trial Court is unreasonable or perverse. If the view taken by the trial Court is a reasonably possible view, the appellate Court should not disturb an acquittal merely because it thinks that another view is better or more preferable."

16. The learned counsel appearing for the first respondent would contend that there is no appeal has been preferred by the State in this case and P.W1 alone has preferred this revision against the acquittal and in such case, the learned counsel would

contend that the High Court can exercise its revisional powers only in exceptional cases when it is shown that there is a glaring defect in the procedure or there is a manifest error on a point of law in the findings of the trial Court. For this proposition of law, the learned counsel appearing for the first respondent would rely on a dictum in *Kishan Swaroop-vs- Government of NCT of Delhi* (JT 1998 (4) SC 486 wherein it has been held as follows:

It is true that it is open to a High Court in revision to set aside an order of acquittal even at the instance of private parties, though the State may not have thought fit to appeal, but this jurisdiction should in our opinion be exercised by the High Court only in exceptional cases, when there is some glaring defect in the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice."

For the same proposition of law, the learned counsel appearing for the first respondent relying on another ratio decidendi in *Bindeshwari Prasad Singh alias B.P.Singh-v- State of Bihar* (now Jharkhand) (2002) 6 SCC 650 . The observation in the said dictum relevant for the purpose of deciding this revision runs as follows:

"We are, therefore, satisfied that the High Court was not justified in interfering with the order of acquittal in exercise of its revisional jurisdiction at the instance of the informant. It may be that the High Court on appreciation of the evidence on record may reach a conclusion different from that of the trial Court. But that by itself is no justification for exercise of revisional jurisdiction under Section 401 of the Code of Criminal Procedure against a judgment of acquittal. We cannot say that the Judgment of the trial Court in the instant case was perverse. No defect of procedure has been pointed out. There was also no improper acceptance or rejection of evidence nor was there any defect of procedure or illegality in the conduct of the trial vitiating the trial itself. At best the High Court thought that the prosecution witnesses were reliable while the trial Court took the opposite view. This Court has repeatedly observed that in exercise of revisional jurisdiction against an order of acquittal at the instance of a private party, the Court exercises only limited jurisdiction and should not constitute itself into an appellate Court which has a much wider jurisdiction to go into questions of facts and

law, and to convert an order of acquittal into one of conviction. It cannot be lost sight of that when a retrial is ordered, the dice is heavily loaded against the accused and that itself must caution the Court exercising revisional jurisdiction."

17. Under such circumstances, I do not find any reason to interfere with the well considered Judgment of the trial Court in C.C.No.1 of 2003 on the file of the Court of Special Judicial Magistrate, Bhavani which does not require any interference from this Court. Point is answered accordingly.

18. In fine, the revision is dismissed confirming the Judgment in C.C.No.1 of 2003 on the file of the Court of Special Judicial Magistrate, Bhavani.

Sd/-  
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

sg

To

1. The Special Judicial Magistrate, Bhavani.
2. The Chief Judicial Magistrate, Erode.
3. The Public Prosecutor, High Court, Madras
4. The Inspector of Police, Bhavani Police Station, Bhavani.

1 cc to Mr.N.Manoharan, Advocate, sr. 26371

Cr1.R.C.No.1749/2003

RSN (CO)  
kk 24/4

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